

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

BERNARD ROSS HANSEN, and
DIANE RENEE ERDMANN,

Defendants.

Case No. CR18-0092-RAJ

DEFENDANT ROSS HANSEN'S
MEMORANDUM RE: SEPTEMBER 11,
2020 STATUS CONFERENCE

Counsel for Ross Hansen submits this memorandum ahead of the September 11, 2020 status conference in this case. Counsel for Mr. Hansen has respectfully requested that this status conference take place so that the Court and the parties can discuss how the ongoing pandemic has affected the ability of counsel to prepare, as well as whether the pandemic might affect the current trial date of January 11, 2021. Counsel for Mr. Hansen is aware that the Court is closely monitoring the ongoing COVID-19 pandemic and that, as of September 4, 2020, the Court has issued a general order finding that "in-person trials continue to present an unacceptable public health risk." General Order 13-20. Counsel for Mr. Hansen also understands that, once the pandemic has subsided sufficiently to allow in-person jury trials to resume, the Court might need to consider how to prioritize the cases that have been delayed by the pandemic, and might also need to consider the

1 relative health risks of conducting in-person trials in multiple-defendant cases, like this one, in which
2 the defendants are at high risk for COVID-19. With this memorandum, counsel for Mr. Hansen
3 aims to provide the Court with information that might assist in determining how and when to proceed
4 with trial and other dates in this case, in light of the ongoing pandemic.

5 First, counsel would like the Court to be aware that Mr. Hansen is at high-risk for a severe
6 illness, should he contract COVID-19. Mr. Hansen will be 60 years old this month, and has multiple
7 underlying health conditions, including congestive heart failure and atrial fibrillation, type II
8 diabetes, high blood pressure, sleep apnea, and obesity, which puts him at high risk of a severe illness
9 from COVID-19, according to the Centers for Disease Control and Prevention.¹ Counsel would
10 respectfully ask the Court to take into consideration the risks to Mr. Hansen's health should the
11 Court proceed in January with a multi-week, multi-defendant trial.

12 Counsel also requests that the Court take into consideration the difficulties counsel has faced
13 in adequately preparing for this extraordinarily complex case amid the pandemic. Counsel joined
14 this case in late January, and a case schedule was set in February, just before COVID-19 began to
15 disrupt the practice of law in this community. Since then, counsel has been working diligently to
16 review the immense volume of discovery and to prepare an effective defense for Mr. Hansen. But
17 those efforts have unexpectedly been hindered by the COVID-19 pandemic. In addition to the
18 general delays and glitches in converting to a remote work environment, counsel has encountered
19 difficulties specific to this case. Because Mr. Hansen is at high-risk for COVID-19, counsel has not
20 been able to meet in-person with Mr. Hansen since one initial meeting in February at the courthouse.
21 Due to technological limitations, Mr. Hansen also has been unable to meet by videoconference,
22 which has made it slow and difficult—at times impossible—to discuss the discovery materials with
23 Mr. Hansen. Counsel has been able to send Mr. Hansen a few documents by email but cannot do so
24

25 ¹ See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

1 for most of the key documents in this case, due both to Mr. Hansen's technological limitations and
 2 to the protective order in this case (Dkt. 24), which precludes counsel from providing Mr. Hansen
 3 with any document that contains the personal information of any Northwest Territorial Mint
 4 customer, employee, or witness. Counsel will eventually need to review the discovery in detail with
 5 Mr. Hansen—indeed, to adequately prepare for trial, it will be necessary for counsel to spend
 6 multiple full days, if not weeks, going through key documents with Mr. Hansen—but, at this point,
 7 it is unclear when it will be safe for counsel to do so. Counsel has also been reluctant to ask the
 8 firm's go-to investigator, who is also at higher-risk for COVID-19, to conduct witness interviews
 9 and conduct site visits, given the ongoing pandemic.

10 The pandemic has also resulted in a compressed trial schedule for Mr. Hansen's counsel in
 11 the coming months, including one trial that directly conflicts with this one and that the judge has
 12 refused to reschedule. Patty Eakes is lead counsel on a case that is scheduled for a 4-to-6-week trial
 13 in Pierce County Superior Court starting on November 30, 2020.² Angelo Calfo will also need to
 14 participate in that trial, due to COVID-related limitations of other partners in the firm. Given the
 15 holidays and the court's scheduled recess from December 14 to 18, this trial is likely to extend into
 16 January 2021 and might not be completed before trial in this case is scheduled to begin. Counsel
 17 earnestly sought to avoid this conflict, but to no avail. The case had originally been scheduled for
 18 trial in July 2020, but it was pushed back due to COVID-19. When that happened, Ms. Eakes agreed
 19 with opposing counsel to try the case on November 2, 2020, hoping to avoid any conflict with the
 20 trial in this case, but the court unilaterally chose November 30 as the trial date instead. Ms. Eakes
 21 has since alerted the court that she is scheduled for trial in this case in January, and has requested
 22 that the Pierce County trial be rescheduled to avoid the conflict, but the court has refused, saying
 23
 24

25 ² *LaRose v. King County*, No. 15-2-13418-9 (Pierce County Super. Ct.) (Rumbaugh, J.).

1 that it could not move the trial to earlier in November, nor would it push the trial out any further
2 than January.

3 Even without these disruptions and difficulties from the pandemic, effectively preparing for
4 trial would be a massive undertaking. The government has produced hundreds of thousands of pages
5 of discovery and hundreds of gigabytes of video and other records. Just last month, in fact, the
6 government produced over 300,000 pages of discovery. As represented in Ms. Erdmann's
7 memorandum, just downloading and organizing this discovery to allow for it to be systematically
8 reviewed has proven time-consuming and difficult. Counsel for defendants are indeed still working
9 to ensure that all of the discovery has been made available and can be reviewed in an effective
10 manner.

11 Counsel for Mr. Hansen would respectfully ask the Court to consider the above information
12 when deciding whether a revised case schedule might, in light of the ongoing pandemic, better
13 ensure the health of the parties and the community and better allow counsel to adequately prepare
14 an effective defense.

15 DATED this 10th day of September, 2020.

16 CALFO EAKES LLP

17 By s/Patty A. Eakes
18 Patricia A. Eakes, WSBA # 18888
19 Angelo J. Calfo, WSBA #27079
20 Henry C. Phillips, WSBA #55152
21 1301 Second Avenue, Suite 2800
22 Seattle, WA 98101
23 Telephone: (206) 407-2200
24 Fax: (206) 407-2224
25 Email: patty@calfoeakes.com
angeloc@calfoeakes.com
henryp@calfoeakes.com

Attorneys for Defendant Bernard Ross Hansen